

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**AMBER SCHERTZ**

Claimant

**APPEAL NO: 12A-UI-00272-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANNS MCDONALD LC**

Employer

**OC: 12-04-11**

**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 28, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 6, 2012. The claimant participated in the hearing. Kristi Wallerich, store manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left her employment for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time crew member for McDonalds from February 21, 2011 to August 17, 2011. She was usually scheduled to work sometime between 6:00 a.m. and 4:00 p.m. The claimant acknowledged being incarcerated during scheduled workdays. She was arrested for driving while her license was suspended and was late for work August 10, 2011, and was arrested for the same offense after work August 15, 2011, and was in jail until 6:00 p.m. August 17, 2011. She was scheduled to work August 16 and 17, 2011, and missed both shifts. Due to the claimant's incarceration, the employer may reasonably consider the absences, reported or unreported, a voluntary leaving of employment without good cause attributable to the employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(16) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2) (amended 1998). The claimant's incarceration on multiple scheduled workdays was not a good-cause reason attributable to the employer for leaving. The employer's attribution of the claimant's absences as a voluntary leaving of employment was reasonable, as it is not expected to hold employment for incarcerated employees; and when an employee is in jail on workdays, the separation is deemed a voluntary leaving of employment under Iowa law. Therefore, benefits must be denied.

**DECISION:**

The December 28, 2011, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw